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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-190703

DATE: December 8, 1971

MATTER OF: Afro-American Datanamics, Inc.

DIGEST:

1. Where protester's initial submission indicates protest is without legal merit, GAO will render decision on matter without requesting report from procuring agency.
2. Acceptance of bid which is low by virtue of offered prompt payment discount is proper since solicitation provided for evaluation of such discounts.
3. Solicitation statement that award will be made on basis of price and "other factors considered" does not permit award to other than the low responsible bidder submitting responsive bid. "Other factors" refers to such things as transportation costs and advantages of making multiple awards, but does not encompass consideration of which bidder is "most" qualified to perform work.

Afro-American Datanamics, Inc. (Datanamics) protests the award of a contract under invitation for bids (IFB) No. C-002 by the Government of the District of Columbia, Community Services Administration, for keypunching and keyverification services. Datanamics asserts that it submitted the low bid of \$2,106.35 and therefore should have received the award.

According to Datanamics, award was made to Dynamic Key punch, which bid \$2,115.05, after evaluation was made of Dynamic's offered 1 percent 20-day prompt payment discount. Datanamics contends that consideration of the prompt payment discount offered by Dynamic was prohibited by the solicitation language of Standard Form 33A, section 9, which, as quoted by the protester, states that prompt payment discounts " * * * will not be considered in evaluating offers for award unless otherwise specified in the specification." Further, Datanamics asserts that even if evaluation of the prompt payment discount were proper so that it was not in fact the low bidder, it should have been awarded the contract because its bid is the

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"most advantageous to the Government, price and other factors considered." As "other factors", Datanamics points to its "exemplary" past year service record and the fact that it is a non-profit community service organization offering free education to inner city residents.

Generally, upon receipt of a protest we request a report from the procuring agency pursuant to our protest procedures, 4 C.F.R. Part 20 (1977). However, where it is clear from a protester's initial submission that the protest is legally without merit, we will decide the matter on that basis. Alaska Industrial Coating, B-190295, October 12, 1977, 77-2 CPD 290; What-Mac Contractors, Inc. - Reconsideration, B-187782, January 14, 1977, 77-1 CPD 34. We believe this to be such a case.

Regarding section 9 of Standard Form 33A, the statement as quoted by Datanamics is quoted out of context. Section 9(a) in its entirety states that:

"9. DISCOUNTS. (a)Notwithstanding the fact that a blank is provided for a ten (10) day discount, prompt payment discounts offered for payment within less than twenty (20) calendar days will not be considered in evaluating offers for award, unless otherwise specified in the solicitation. However, offered discounts of less than 20 days will be taken if payment is made within the discount period, even though not considered in the evaluation of offers."

Obviously the Discounts provision does not exclude consideration of all prompt payment discounts but only those discounts offered for less than the minimum discount period of 20 days. Since Datanamics states that its competitor offered a 20-day discount, there is no merit to the contention that the offered discount should not have been considered.

Regarding Datanamics' assertion that its "exemplary" service record and its alleged status as a "non-profit community service organization" are "other factors" which renders its bid the most advantageous to the Government, notwithstanding the fact

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that it is not the low bidder, it has been held that the award of Government contracts is required to be made to the lowest responsible bidder submitting a responsive bid without consideration of such things as which bidder is "most" qualified to perform the work. 37 Comp. Gen. 550 (1958). The statement in the solicitation that award would be made on the basis of "price and other factors considered" means that the Government may take into account foreseeable costs or delays resulting from differences in location of supplies, transportation costs, advantages of making multiple awards, taxes, and the origin (foreign country or domestic) of supplies. See Federal Procurement Regulations § 1-2.407-5 (1964 ed. amend. 85). It may not, however, evaluate the matters referred to by Datansmics for purposes of making award to other than the low responsible bidder.

Accordingly, the protest is summarily denied.


Deputy Comptroller General
of the United States